

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4450 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BECHARBHAI DURLABHAI, SINCE DECEASED THROUGH HEIRS & L.R.

Versus

MANEKBHAI J. AMROLIWALA

Appearance:

MR PK PAREKH for Petitioners

MR BJ JADEJA for Respondent No. 1

None present for Respondent No. 2

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/08/1999

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. Challenge has been made by the petitioner in this special civil application to the order of the Gujarat Revenue Tribunal dated 7th March, 1990 passed in Revision Application No. TEN.S.2.99/85 under which the matter has been remanded to the Mamlatdar and A.L.T. with direction

to initiate the proceedings to take the possession of the disputed land of Survey No.67/2 admeasuring 1 acre and 14 gunthas and Survey No.80/4 admeasuring 1 acre and 17 gunthas of Village Chhaprabhatha from the tenant and hand over the same to the land lady, the respondent herein. The petitioner is the tenant and the respondent No.1 is the landlord.

3. During the course of arguments, both the learned counsel for the parties are in agreement that the judgment of this court reported in AIR 1985 GUJ 127 has strong bearing in this case but it has not been cited before the Tribunal and in case it would have been cited then there is all possibility that the judgment would have been otherwise than what it has been given by the Tribunal. Learned counsel for the petitioner submitted that even if it is taken that some excess land i.e. land in excess of ceiling limit is with the petitioner still under section 32-P he has preferential right for purchase of the same and that what precisely this Court has held in the decision aforesaid.

4. However I do not consider it to be appropriate to give any final verdict in this case at this stage. When this judgment which has strong bearing in the matter has not been considered by the Tribunal, it is better that the matter may be sent back to the Tribunal to decide the matter afresh in the light of the judgment of this Court. Otherwise also, the judgment of the Tribunal remained under stay for all these years and the matter is at the stage where we start. So this is another ground which justifies this my view to remand this matter to the Tribunal.

5. In the result, this special civil application succeeds in part and the same is allowed and the order dated 7th March, 1990 passed by the Gujarat Revenue Tribunal in Revision Application No.TEN.S.2./99/85 is quashed and set aside and the matter is remanded back to the Tribunal to decide the matter afresh after hearing the learned counsel for the parties and taking into consideration the decision of this Court in the case of Jivraj Jutha vs. State reported in AIR 1985 GUJ 127. Rule is made absolute in the aforesaid terms with no order as to costs.

zgs/-

